United Nations A/HRC/37/NGO/65

General Assembly

Distr.: General
7 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01831(E)
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The Rights of the Child: Sale of Children - Illegal adoptions

Introduction

While recognizing that the Convention on the Rights of the Child ("CRC"), its Optional Protocols, and mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography have all been critical steps in addressing the global needs of children, a wide variety of illegal acts and illicit practices have been, and continue to be, committed in the context of domestic and intercountry adoptions.

The preamble of the CRC recognizes that for the full and harmonious development of personhood, children should grow up in a family environment. Article 7 of the CRC emphasizes the need for children to be registered immediately after birth and to have the right from birth to name, nationality, and as far as possible, the right to know and be cared for by their parents. Moreover, Article 8 directs "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

Article 21 of the CRC establishes that the paramount consideration in all matters related to adoption must be the best interests of the child. Particular attention is paid to the need for constructs to facilitate legal adoptions, including appropriate measures that guarantee the placement of children is not inspired by improper financial gain.

To this end, Article 21 calls on State Parties participating in the system of adoption to ensure the process "is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary."

II.The Phenomenon of Illegal Adoptions

In her report at thirty-fourth session of the Human Rights Council ("HRC") in March 2017, the Special Rapporteur on the sale of children conducted a thematic study on the illegal adoption for commercial purposes, with recommendations on how to prevent and combat the phenomenon.1 By her account, "adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any illicit activity or practice, such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption, constitute illegal adoptions and must be prohibited, criminalized and sanctioned as such."2

Illegal adoptions violate a multitude of human rights, including the rights of both biological and adoptive parents, as well as their subsequent families. Bearing in mind HRC resolution 34/16—which calls for no child left behind, and that those furthest behind be reached first3—additional attention, concern, and resources must be dedicated to the issue of illegal adoptions and the myriad of ways in which the unlawful practice devastatingly corrodes a child's most essential human rights.

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1 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography U.N. Doc. A/HRC/34/55 (March 2017).

2 *Id.*, para. 25.

3 Rights of the child: protection of the rights of the child in the implementation of the 2030 Agenda for Sustainable Development, A/HRC/RES/34/16, para. 7, (March 24, 2017).

A.Forms of Illegal Adoptions

Among the most common methods used to facilitate illegal adoptions are the abduction of babies (through kidnappings or by falsely informing parents that their baby was stillborn or died shortly after birth), the improper inducement of consent (through misrepresentation, bribery or coercion), and improper financial gain (through payment for the child or the payment of bribes to intermediaries involved in the adoption process).4 Inherent to these methods is the bypass of regulations and falsification of documents, including birth and medical certificates, the identification documents of the biological mother, DNA test results, and relinquishment or abandonment declarations.5

In her report, the Special Rapporteur on the sale of children notes that the above-mentioned methods, illegal acts, and illicit practices are generally "linked to deficiencies in the child protection system (such as inadequate procedures for providing counseling to biological parents and flawed relinquishment procedures), which are exploited by criminal networks driven by the lucrative business of selling children and facilitating illegal adoption, often with the involvement of State officials."6

In cases of both domestic and intercountry illegal adoptions, "vulnerable parents, in particular mothers, are often targeted (e.g. single mothers in situations of economic hardship, from rural areas, belonging to indigenous communities and/or without access to education)."7 Thus, layers of crossover exist in terms of the human rights violated by this ongoing criminal practice.

B.Factors Enabling Illegal Adoptions

Deficiencies in the child protection system, as well as political, legal, socioeconomic, cultural and environmental factors all play a role in illegal adoptions. Perhaps most alarmingly, however, is the involvement of State officials and licensed professionals, combined with the pressure of demand. In some cases, this lucrative illegal baby trade is openly advertised on social media networks, whereon potential buyers can pick from a catalogue of pregnant women, customizing child by gender, color, and race.8 This practiced is further carried out by a web of agents, including traffickers, doctors, lawyers, judges, and State officials.9

Underground sex trades have also reportedly become involved with illegal adoptions. Studies indicate that while women sex-workers used to avoid getting pregnant, a gainful market now exists to sell unwanted children for further profit, thus creating a trifecta of income for traffickers.10

In terms of demand, there is a sense that many parties involved, including mediators and adoptive parents themselves, believe they are ultimately helping the child by providing promise of what they deem a "better life." This notion, however, replaces the child's will with that of the adopter, and it must be emphasized that international norms and standards do not establish the right to adopt.11

III.Effects of Illegal Adoptions on the Rights of the Child

Illegal adoptions violate multiple child rights norms and principles, including the best interest of the child, the principle of subsidiarity and the prohibition of improper financial gain. These principles are breached when the motivation behind an adoption is to find a child for adoptive parents rather than a family for a child in need.

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4 A/HRC/34/55, *supra* note 1, para. 28.

5 *Id.*, para. 29.

6 *Id.*

7 *Id.*, para. 30.

8 Lylia Aziz, *Ugly Truth of Baby-Selling*, Vulan Post (November 2016) https://vulcanpost.com/595236/documentary-babies-selling-malaysia-expose/.

9 *Children for Sale*, Vice International (June 2017), https://www.youtube.com/watch?v=BMnOrRf0Wug.

10 Lylia Aziz, *supra*, note 8.

11 A/HRC/34/55, *supra* note 1, para. 26.

Adopted children are not blank slates. They are people with genetic tendencies, predispositions, and talents uniquely their own, endowed with the promise to be "born free and equal in dignity and rights."12 This promise is obliterated by the practice of illegal adoptions, through which babies are bought and sold like stock-in-trade.

Beyond the obvious detriment to personhood and dignity, as well as denial of the right to family, the practice of falsifying documents poses additional practical concerns. Without a birth certificate, children are denied the right "to recognition everywhere as a person before the law."13 Lack of proper documentation renders a child stateless. Without citizenship, illegally adopted children are denied the right to public education and healthcare. They cannot apply for a passport, open a bank account, or get married. Perhaps less fundamentally, but importantly, their trust of government is destroyed upon knowledge that doctors, lawyers, judges, and State officials are not only complicit, but in many cases active in the process. These illegally adopted children are denied proper standing in our world from the beginning of their own existence.

IV. Recommendations

1. Human Rights Advocates ("HRA") urges the HRC to hold an all-day panel on illegal adoptions. This issue necessarily involves multiple cross-sections of human rights violations, which are only further amplified and exploited in countries contending with severe poverty, humanitarian situations, and armed conflict, just to name a few. Beyond the children adversely affected, this issue further touches and concerns the rights of biological parents, adoptive parents, their subsequent families, communities, and thus, the threads of society at large.

2. Additionally, HRA respectfully requests the HRC to urge State Parties participating in the system of adoption to address pervasive problems inherent to the sale of children and illegal adoptions, including:

- Regulation and supervision of adoption processes, including initiatives addressing the issues of falsified documents and improperly induced consent. Current gaps in national child protection systems could potentially be addressed by implementing national Registries for both biological mothers and children.
- Ensuring unlawful activity of every kind, committed at any stage in the adoption process is criminalized, for corruption of this nature necessarily feeds into the sale of children and illegal adoption practices.
- Procedures for victims to report violations, particularly in instances of systemic abuse at the hands of State officials and licensed professionals, including doctors, lawyers, and judges.

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12 Universal Declaration of Human Rights, Article 1.
13 *Id.*, Article 6.